



EMBASSY
SUITESSM

Mitigation

DJ's answers in Statement - try to
humanize client for jury - would it
be difficult for them to kill him -

Jury Selection

individual Voir Dire

- Issue Capital Punishment
- Issue of Pre Trial Publicity

Post Panel in remaining cases

Standard Voir Dire instructions
Two stages - Ask?



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Hoej CP

A-3 escaping deliction

A-7 Felony murder

Duplication

Espinoza - Fla. of unproven by facts - considered
112 SE 2926 it is violation of 8th

Jenkins - ~~Duplication~~ On Sup Ct.
15th St 3d 264

*

Gr. Conviction - File Motion to Merge
to provide Penalty

that not jury - that it is merged

Stress of fact going weighing too much
On Sup Ct - must be merged

*

4554 Lake Forest Drive Blue Ash, Ohio 45242 513/733-8900

Please do it - your judge decides

003352



Review Questionnaire

No mitigation - 1st phase or Guilt Phase
and 1st phase trial phase

Check - Co. Ref. - Jew Rec'd - looking up
a vesting of fees - creditable

* - consider Polygraph for Mitigation
Phase

Check list for

Pro- Objection amendments to a matter of
low ^{ave} ~~net~~ ^{net} Ag, Circumstances

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Jurors
look for some to? re Death Penalty

Jury don't see Mitigation
distinction that if you can not be unanimous
to death - you must move on to life

Prepare to Client

Save Anti-Death cases - rather than
picking pro-death 1/6

Time - Log



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Subjected test
questioning wts

Need not be personally

if after - time/phases - found guilty - are
you leaning toward death as opposed to life
if no challenge for cause - should be wholly
unjust

Person w Children

dist. - when raised is it more important to have
children obey the law or think for themselves.

Life - well not get out
30+3 + consec

30y - 3 - day for day + 3.5 + 30 before eligibility
+ 3y + other charges



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- try
- make to strike
- more minimalist
- more creative instruction

Jury Instruction
Address - 2 Posing Indictment
Principal offense - prior calculation
& design.

Request charges other-offenses

MURDER -

NEGLIGENT HOMICIDE

JURY SELECTION 10:30 N-2

status yet not overfill 1 split 1 split - didier
1-total

other's assist

I disagree with verdict - let's not argue

let jury know you are concerned about impression

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MAKE PROSECUTOR

pick principal offender on p. 10
calculator & design -

Make pos elect - then only
specific instruction

State v. Benix 32 Or. St. 369 (1989)

Prosecutor opens door
when he argues life doesn't mean life

check request for any instruction as
to Reasonable Doubt at Mitigation phase



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Don't think Parole Parole, automaticity
only needed for person convicted of 2nd M.D.
? could mitigating factors affect

would it substantially impair ability to com-
pense 4: sentence - if yes - ADP - even

Not everyone convicted of intentional ~~murder~~ ^{murder} deserve
to die - Legislature has said so - allow for life

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Clinical Psych

Refers Burden to my forward in event
of Multiple Factors by Reproduction
Event

Then App Concern to meet outweight
Multiple Factors happened

Read Still Violette

Dealing w Individual - not fear of
the car

Notes Per Voice Disc Instruction
explaining Phase I Phase II

CENTRAL PSYCHIATRIC CLINIC
COMMUNITY DIAGNOSTIC AND TREATMENT CENTER

909 Sycamore - Third and Fourth Floors
Cincinnati, Ohio 45202
(513) 651-9300

November 2, 1994

RE: LEE EDWARD MOORE
DOC.#: B94-00481

Mr. Lee Edward Moore was evaluated in reference to Mitigation of Death Penalty, pursuant to Ohio Revised Code 2929.03 and as defined in Ohio Revised Code 2947.06. Mr. Moore is charged with Aggravated Murder with Specification, Aggravated Robbery with Specification and Kidnapping. The defendant was evaluated by the undersigned, David Chiappone, Ph.D., Clinical Psychologist, on September 13, September 15, September 17, September 22 and October 20, 1994 for a total of approximately six hours at the Hamilton County Justice Center (HCJC). He was administered the Wechsler Adult Intelligence Scale-Revised (WAIS-R), the Wechsler Memory Scale, and the Bender Gestalt. Mr. Moore was also interviewed at the HCJC by Jenny O'Donnell, B.S., Psychology Trainee, on September 1, and September 12, 1994 for a total of approximately two hours and forty minutes. In addition, Ms. O'Donnell administered the Minnesota Multiphasic Personality Inventory (MMPI) on September 14, 1994 at the HCJC for approximately two hours and thirty minutes. The nonconfidential nature of the evaluation was explained to Mr. Moore prior to all sessions, and he acknowledged understanding such and signed a form to that effect. He also acknowledged his understanding that he was being evaluated for possible Mitigation of the Death Penalty. Collateral contact was made by the undersigned psychologist with the defense attorneys, Dan James and Tim Deardorff. Ms. O'Donnell made collateral contact with Dan James and Tim Deardorff, defense attorneys; Chuck Stiddham, mitigation specialist; Pamela King, juvenile probation officer; Mark Piepmeier, prosecuting attorney; Georgia Moore, the defendant's mother; Lee Moore Sr., the defendant's father; Ed Roberts, Fairfield Police; Dick Flagg, guidance counselor at Mt. Healthy High School; Westerfield, Mt. Healthy High School principal; Robin Thrasher, the defendant's sister; Beverly Parker, the defendant's sister; Shatunda Neal, the defendant's girlfriend; James Ray, father's friend; and Shirley McDaniel, a neighbor of the family. Records were obtained from the Hamilton County Justice Center (HCJC) Intake Assessment and medical chart, Children's Hospital, two letters from the defendant to his parents, employment records from McDonald's, Mt. Healthy High School records, the defendant's statement to the police, statements from the two alleged accomplices, Fairfield Police Department report of two alleged accomplices, coroner's report, medical records from a prior treating source Terry Schwartz, Psy.D., Juvenile Court contact records, Juvenile Detention Center in Butler and Hamilton County, Central Baptist School records, Orthopedic Diagnostic and Treatment Center, and Woodward High School. Records have not been received

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RE: LEE EDWARD MOORE

from the Talbert House for Young Men. What follows are my findings and information regarding mitigation.

In the interview, Mr. Moore presented as a large, stocky built, African American male appearing older than his nineteen years. He had short cropped hair, full beard and long fingernails. He was oriented in all spheres and was relevant and coherent. He did not appear to be suffering from any hallucinations, delusions or other symptoms of a major mood or thought disorder. He was somewhat downcast about being incarcerated. He could attend and concentrate as needed. His emotional expression throughout several interviews did not vary. His thoughts were logical, coherent and goal-directed. Memory was intact. He was able to complete all tasks presented to him and participated in psychological testing without any difficulty. Regarding the current allegations, Mr. Moore was able to provide a relevant and coherent story, explaining his acts relevant to the allegations and added that he was using marijuana and alcohol on the day of the offense.

Mr. Moore reported having juvenile charges of Carrying a Concealed Weapon, Receiving Stolen Property, Grand Theft Auto and Drug Abuse. Collateral contact with Pamela King, Juvenile Probation Officer, reported that Mr. Moore was cooperative in reporting weekly and would discuss his activities with her. Ms. King also said that his mother was involved with his court hearings and enforced his cooperation.

Mr. Moore was born and raised in the Cincinnati area, one of eight children in two families, and the only child from the union of his parents. When the defendant was approximately six years old, his parents divorced. He was raised by his mother and had regular visitation with his father. When Mr. Moore reached his late teens and started having difficulties at school and legal problems, Mrs. Moore had the defendant live with his father. The defendant remembers his parents arguing but did not recall any violence between them. He described his mother as strict. Both parents have always worked. He remembers going to live with father at times, and father being variably present. It appears that Mr. Moore had difficulty with the divorce and felt the absence of a father figure. Robin Thrasher, the defendant's sister, indicated that Mr. Moore did miss father and was hoping that his parents would get back together. Robin Thrasher added that Mr. Moore was basically a "golden child" and that he received everything he needed in the home and was overprotected. He was a nonproblematic child until adolescent years and was teased in school and bullied by one particular young man. A friend of the family and neighbor, Shirley McDaniel, corroborated that Mr. Moore was teased as a youngster and had an altercation with a classmate. It appears that sometime after this, Mr. Moore started getting into trouble and was more willing to act out. In retaliation, Mr. Moore used brass knuckles in fighting with the youth. Mr. Moore received a Carrying a Concealed Weapon charge from that incident.

RE: LEE EDWARD MOORE

Mr. Moore has generally intact physical health. He had no major head injuries, illnesses or surgeries as a child. Mr. Moore did not suffer any developmental delays. He did sustain two head injuries and a sprained ankle but medical records show those events as unrelated and not problematic. Collateral contact from the Hamilton County Justice Center reveals that Mr. Moore was seen in intake and had three sick calls regarding physical conditions.

*below average grades
discipline problems
Mother's supervision*

Academically, Mr. Moore obtained eleven grades of formal education and eventually a GED in June, 1994. He was held back in the fourth grade and ninth grade. He made below average marks in school. He was in regular classes. His grades deteriorated when he started "hanging with the wrong crowd" and using marijuana and alcohol. In later years he was truant from school and dropped out. He was suspended for fighting. He did not engage in extracurricular activities. He made friends adequately. Collateral contact with Dick Flagg, guidance counselor of Mt. Healthy High School, revealed that Mr. Moore had discipline problems and decreased motivation. Yet, Mr. Moore was always polite in interactions with Mr. Flagg. What success Mr. Moore did have in school, however, appeared to be at mother's insistence and supervision. Mr. Flagg remembers Mr. Moore "trying to change his ways" on several occasions but his efforts were short-lived.

Vocationally, Mr. Moore last worked in 1992 as an usher for a few months but was fired for absenteeism. He worked at a fast food restaurant for several months but quit that job. He was fired from a grocery store for absenteeism. He said he would rather be "hanging with the boys." His longest period of employment was approximately five months. He admitted that bosses were critical of him for his irresponsibility, tardiness and absenteeism and that co-workers would be upset with him because they had to fill in for him. He stated that recently he felt his life was going nowhere and that he needed to get a job and this was at the insistence of his parents.

weird

Prior to the current allegations, Mr. Moore was living with his father but felt he was living by himself. That is he liked living with his father. His father would not "nag him" like his mother did. He was able to do what he wanted to do. Mr. Moore was receiving some Social Security funds as father was retired. Mr. Moore had to pay rent to father but was able to retain some of the money from Social Security.

Mr. Moore has never been married and has no children. He had one serious relationship with Shatunda Neal, meeting her when he was sixteen, and this relationship lasted for about four years until he was arrested. He admitted that they argued periodically. She complained about his alcohol use.

Mr. Moore has never been psychiatrically hospitalized. He has never received psychiatric medications. He has never experienced

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any psychotic symptomatology. He denied suicide ideation or attempts. As an adolescent, after difficulties in school and in an incident that raised questions in Mrs. Moore's mind about her son's substance abuse, Mr. Moore did receive treatment for a short duration with Terry Schwartz, Psy.D., Psychologist. Mr. Moore felt it was not helpful. Mr. Moore has not received any psychiatric treatment while at the HCJC.

Regarding substance use, Mr. Moore started using alcohol and marijuana by age fifteen. Last use of both substances was on the day of his arrest. He reported that he would use both substances several times during the week and spend as much as \$350.00 a week on marijuana. His drug of choice was marijuana. He has never had periods of sobriety. His mother and girlfriend complained about his drug use. On one occasion he came home and mother had to help him to bed, but he denied or would not talk about his substance use. Shatunda Neal, the defendant's girlfriend, reported that Mr. Moore has a problem with alcohol and marijuana. The defendant's father and sister, Beverly Parker, were aware of Mr. Moore's substance use, but were not aware to what extent. Mr. Moore claimed he started using alcohol and marijuana to get his mind off his problems. When using substances he experienced and reported personality change, use in the morning, financial difficulties, blackouts and loss of control. He has never received substance abuse treatment.

Regarding the use of weapons, Mr. Moore has had a juvenile charge of Carrying a Concealed Weapon, involving brass knuckles in which he fought with a peer. Also, several weeks prior to the current allegations, Mr. Moore was robbed at gunpoint. Lee Moore, Sr., the defendant's father, and James Ray, father's friend, were told of this incident by Mr. Moore and related it to Ms. O'Donnell. It was after this incident that Mr. Moore reportedly obtained a weapon from his father's home, unbeknown to father. Lee Moore, Sr. counseled his son not to take the law into his own hands and told his son to report the assault to the police.

The Wechsler Adult Intelligence Scale-Revised (WAIS-R) revealed Mr. Moore obtained a Verbal IQ of 110, a Performance IQ of 97, a Full Scale IQ of 100, placing him in the average range of intellectual ability, and at the 50th percentile of the general population. There is no significant verbal versus performance differential. Mr. Moore displayed the intellectual capability to appreciate his and other's actions and the ability to handle high school studies. He has above average skill in learning a simple coding task involving active memory. It appears with structure he works fairly well. The Wechsler Memory Scale resulted in a memory quotient of 100 which is commensurate with the obtained IQ and suggests that he has intact memory abilities. There are no pathomonic signs on the Bender Gestalt test. Results of the Minnesota Multiphasic Personality Inventory suggest that Mr. Moore answered in such a fashion as to overendorse pathology and

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invalidate the results. This is not inconsistent with individuals who are involved with such serious charges and possible consequences.

Summary of Mitigation Issues

Lee Moore, a nineteen year old, African American male explained that his actions relevant to the current offenses were a function of his feeling that his life was going nowhere and that he was abusing substances. Developmental perspective reveals that Mr. Moore grew up receiving all that he needed, especially from his mother and being somewhat overprotected, while having a distant father and struggling with the divorce of his parents. It appears that he did not receive guidance from his parent to give him a sense of direction in life and goals to work toward. Consequently, both academic and vocational history are incomplete. As a child, he was teased at times and felt he had to present a "tough guy" presentation. He did so on one occasion and eventually obtained a Carrying a Concealed Weapon charge after fighting with a peer. He has had short-term treatment regarding his acting out behavior as a juvenile, but he found it not helpful. Mr. Moore started to "hang" with the wrong crowd and was abusing substances in his adolescent years. In addition, prior to the allegations, Mr. Moore was himself accosted and soon thereafter he obtained a weapon. This young man who has not been able to utilize his potential (as noted by intelligence testing) and has struggled with his sense of identity, especially in terms of the loss of direction from a father figure. He turned to using substances, and obtained a weapon, to make him feel more like a member of "his own group."

David Chiappone, Ph.D.
Clinical Psychologist

DC/vle
11/1/94

RE: LEE EDWARD MOORE

Diagnosis:

Axis I: Polysubstance Dependence, alcohol and marijuana

Axis II: Antisocial Personality

Axis III: None Relevant

Treatment Recommendations: Mitigation factors reveal substance abuse, anger at lack of parenting especially from father, sense of loss of direction in his life in spite of potential, and increasing episodes of acting out with violence and he has little if any direction.

The Supreme Court of Ohio

30 EAST BROAD STREET, COLUMBUS, OHIO 43266-0419

February 8, 1994

COMMITTEE ON THE
APPOINTMENT OF COUNSEL FOR
INDIGENT DEFENDANTS IN
CAPITAL CASES

(614) 466-1551
1-800-826-9010 (IN OHIO)

Honorable William J. Morrissey, Jr.
Hamilton County Court of Common Pleas
Courthouse: 1000 Main Street
Cincinnati, Ohio 45202

RE: State of Ohio vs. Lee Moore
Case No. B940481

The Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases (Rule 65 Committee) has been notified of the appointment of Daniel J. James and Timothy Deardorff as trial counsel in the above case.

The attorneys are certified by the Committee as follows:

<u>Daniel J. James</u>	-- <u>Lead Trial Counsel</u>
<u>Timothy Deardorff</u>	-- <u>Trial Co-counsel & Appellate Counsel</u>

Therefore, they are approved as counsel in the captioned case.

Enclosed is a Dispositional Report Form which must be completed and returned to us at the conclusion of this case.

Thank you for your cooperation. If you have any questions, please contact Keith Bartlett at (614) 466-1551.

cc: Daniel J. James
Timothy Deardorff
94-AP-005

003366

State v Huertas
 51 & 53 (1990) 22
 impact
 pleated
 influence

Motion Supp

Le. motion

125-153

effect of Marijuana

p126: Given on 14 Jan 20, 1994 smoked cup full of Marijuana
 6" long bed of stone

Pen

p148: Smoked large joint
 what effect does Marijuana have on you normally

A- It just it makes me feel high
 differently from, different from when I don't smoke it
 it made me feel high

p149: What I mean by high is it has. I can't explain it.
 It just made me feel high - just something that
 I can't explain

Q- would you do anything different

A- I probably wouldn't, probably wouldn't do
 anything different - just, I just had a different
 feeling

Q Does it make you feel good

A- Yeah - a little

Statement

- for 0-34

- other 2 - will not get death

- want to live

003367

872-7900 Tom & Son - dog

Neighbor - McDaniel
+ wife

- Beverly
- MOM
- Father - has i.e.
condition

Father - Alcoholics
Mother - Disciplinarian
NO Freedom

Spoiled

4th - Parents Divorced

Sub-pull up leaves w/ Betty

No Trust

DIVORCE

5th - Gr - no father figure

Nice Kid

MOM
- neglectful
- discipline
- religious
- seems ready to explode

PICKED up

Peer Pressure - Waves + smile

McDaniel -

Small Child - fighting

to Mother - Father -

sub emotional relationship

- Kid younger than him

5th & 6th - Skipping School

- kids coming in

would be accepted

Peace Maker

MARIJUANA

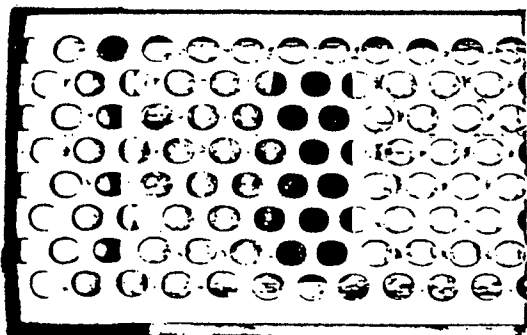
Alcohol

Going to Winter Town - instead of Mr. Peabody

Beverly, McDaniel

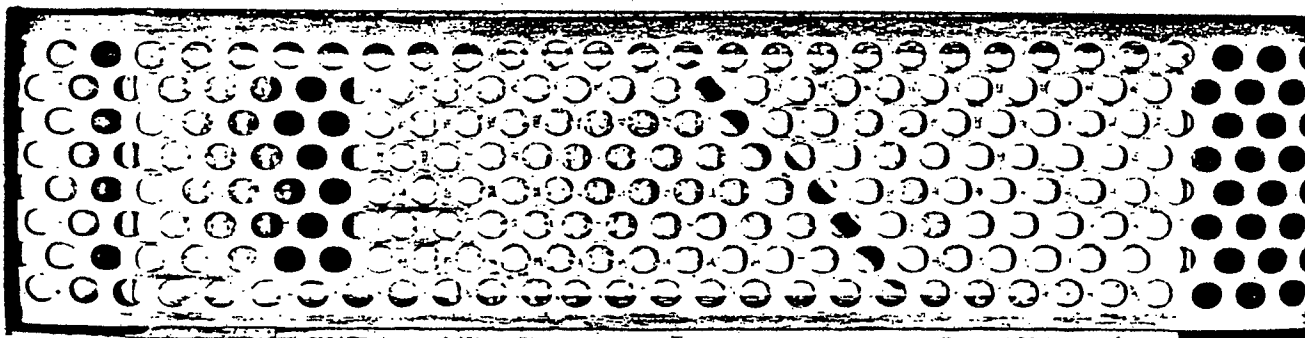
mother

D. C.



PHONE CALL			
FOR	<u>Dan</u>	DATE	<u>11-14</u> TIME <u> </u> A.M. / P.M.
M.	<u>Call Dr. Chiappone @ :</u>		
OF	<u>(Have him paged)</u>	<u>853-5656</u>	<input checked="" type="checkbox"/> PHONED
PHONE	AREA CODE	NUMBER	EXTENSION
MESSAGE	<u>Home 922-7149 (if you can't reach him @ other #, Judge said ok to talk to Mark P.)</u>		
SIGNED	<u>K.</u>		
			TOPS FORM 4003

PHONE CALL			
FOR	<u>Dan</u>	DATE	<u>11-14</u> TIME <u>8:25</u> A.M. / P.M.
M.	<u>Dr. Dave Chiappone</u>		
OF	<u>1</u>	<u>791-0600</u>	<input checked="" type="checkbox"/> PHONED
PHONE	AREA CODE	NUMBER	EXTENSION
MESSAGE	<u>Re: Lee Moore</u>		
SIGNED	<u>K.</u>		
			TOPS FORM 4003



003369

Meeting w
DC

11/19/94
2hr

Emily Schwartz

Conduct Disorder - precursor to Anti-Social Personality

10:00 - 11:00

791-0600

7:00 - 7:30

Removal - Not doing

Admission - doing as best as can

Brass Nuckles - 17

Not bad on

Pros

- No Removals
- No May - Factors
- Anti-Social

30-100 days

Anti-Social - before all the criteria

Age 15 before 15 - 32 12 truant, fights, weapon

Pattern unprovoked behavior - no consistent delinquency - aggressive fights
illegal activities - no prior involvement

MMPI2 Obsession Scales - as to

to anti-social
— OVERINTENSE → typical for people from their change
very distressed - well thought out
does not lead to diagnosis of Anti-Social

DC - No answers - just tell them
every day falling apart - all kinds of problems
no overall moral